

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**SPABO ICE CREAM CORP. d/b/a**

**MISTER SOFTEE and**

**MISTER SOFTEE, INC.**

**Plaintiffs,**

**v.**

**E. PIEDAD RIVERA d/b/a MISTER SOFTEE  
ET AL.**

**Defendants.**

**CIVIL ACTION NO.  
1:07-cv-08628-PAC**

**REQUEST FOR CERTIFICATE OF DEFAULT PURSUANT TO  
FEDERAL RULE OF CIVIL PROCEDURE 55(a)**

**TO THE CLERK:**

Pursuant to Federal Rule of Civil Procedure 55(a), plaintiffs request that the clerk enter a default on the docket against defendant E. Piedad Rivera d/b/a "Mister Softee" for failure to answer or otherwise respond to the verified complaint within the time prescribed by Federal Rule of Civil Procedure 12(a)(1)(A). Plaintiffs' affidavit in support of request for default is attached.

**EINBINDER AND DUNN, LLP**

BY: \_\_\_\_\_

Michael Einbinder  
104 W. 40<sup>th</sup> Street, 20<sup>th</sup> Floor  
New York, NY 10018  
Attorneys for Plaintiffs Spabo, Inc.  
and Mister Softee, Inc.

Date: November 29, 2007

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

SPABO ICE CREAM CORP. d/b/a  
MISTER SOFTEE and

MISTER SOFTEE, INC.

Plaintiffs,

v.

E. PIEDAD RIVERA d/b/a MISTER SOFTEE  
ET AL.

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

CIVIL ACTION NO.

**PLAINTIFFS' AFFIDAVIT IN SUPPORT OF CERTIFICATE OF DEFAULT**  
**PURSUANT TO LOCAL CIVIL RULE 55.1**

Plaintiffs Spabo Ice Cream Corp. and Mister Softee, Inc., by their undersigned attorneys, hereby request that the clerk issue a Certificate of Default against defendant E. Piedad Rivera d/b/a "Mister Softee" ("Rivera") and in support thereof aver as follows:

1. Defendant Rivera is not an infant, in the military or an incompetent person.
2. Rivera has failed to plead or otherwise defend this action and no extension to file an answer has been granted by this Court.
3. Rivera has failed to respond to the Complaint and Summons, which were properly served on Rivera on October 12, 2007 at defendant's last known address at 427 Turneur Ave., Apt. 1F, Bronx, NY 10473. Attached is a true and correct copy of the Affidavit of Service.

I certify under penalty of perjury that the foregoing is true and correct.

Dated: November 29, 2007

By: \_\_\_\_\_

Michael Einbinder

**CERTIFICATE OF SERVICE**

I, Michael Einbinder, certify that I have this day caused a true and correct copy of the below described pleading or motion to be served upon defendant at the address listed below:

Pleading or Motion served:

Request for Default Pursuant to Federal Rule of Civil Procedure 55(a) and Plaintiffs' Affidavit in Support of the Request for Default

Defendant:

E. Piedad Rivera  
427 Turneur Ave., Apt. 1F  
Bronx, NY 10473

Mode of Service:

Via first class mail

Date: November 29, 2007

  
\_\_\_\_\_  
Michael Einbinder